

### REMARKS

Claims 32-50 and 55 were rejected and remain pending. In light of the following remarks, Applicants respectfully request reconsideration and allowance of claims 32-50 and 55.

#### Information Disclosure Statement

Applicants respectfully note that an initialed copy of the PTO-1449 form filed April 1, 2002, has not been returned. Thus, Applicants respectfully request return of an initialed copy. For the Examiner's convenience, a copy of the PTO-1449 form filed April 1, 2002, is attached hereto. In addition, copies of the listed references can be resubmitted upon request.

#### Rejections under 35 U.S.C. § 102(a)

The Examiner rejected claims 32, 41-45, 48-50, and 55 under 35 U.S.C. § 102(a) as allegedly being anticipated by the Winzeler *et al.* reference (*Science*, 281:1194 (1998)).

Applicants respectfully disagree. The present claims require each recited sample to contain a different collection of fractionated genomic nucleic acid. The Winzeler *et al.* reference discloses directly scanning allelic variation of the yeast genome. At no point does the Winzeler *et al.* reference disclose any method that involves different collections of fractionated genomic nucleic acid. In fact, the section cited by the Examiner, note number 11 on page 1196, specifically states that yeast genomic DNA was digested with DNase I to yield DNA fragments that were end-labeled and hybridized to the array. Thus, the Winzeler *et al.* reference does not teach samples containing different collections of fractionated genomic nucleic acid.

In light of the above, Applicants respectfully request withdrawal of the rejection of claims 32, 41-45, 48-50, and 55 under 35 U.S.C. § 102(a).

Rejections under 35 U.S.C. § 103(a)

The Examiner rejected claims 33-34 and 39-40 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Winzeler *et al.* reference in view of the Biro *et al.* reference (WO 98/30721) and further in view of the Gardiner *et al.* reference (*Genetics*, 134:917 (1993)). The Examiner also rejected claims 46 and 47 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Winzeler *et al.* reference in view of the Bowen *et al.* reference (U.S. Patent No. 6,541,684) and in view of the Micheltmore *et al.* reference (*PNAS*, 88:9828 (1991)). In addition, the Examiner rejected claims 37 and 38 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Winzeler *et al.* reference in view of the Dong *et al.* reference (U.S. Patent No. 6,361,947).

Applicants respectfully disagree and submit that the Examiner has not established a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness, the art must teach or suggest all limitations of the claim at issue. *See, e.g.*, MPEP § 2143.03. The Winzeler *et al.* reference discloses directly scanning allelic variation of the yeast genome. Nowhere does the Winzeler *et al.* reference, or any of the cited references, teach or suggest sets of samples where each sample contains a different collection of fractionated genomic nucleic acid. In fact, none of the cited references provides such sets of samples. Thus, the obviousness rejection is improper.

In light of the above, Applicants respectfully request withdrawal of the rejection of claims 33, 34, 37-40, 46, and 47 under 35 U.S.C. § 103(a).

**CONCLUSION**

Applicants submit that claims 32-50 and 55 are in condition for allowance, which action is requested. The Examiner is invited to call the undersigned attorney at the telephone number

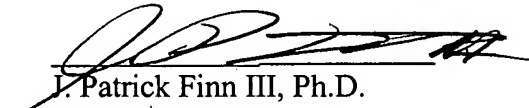
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Serial No. : 10/031,979  
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Page : 8 of 8

Attorney's Docket No.: 08411-013002 / ISURF 2517

below if such will advance prosecution of this application. The Commissioner is authorized to charge any fees or credit any overpayments to Deposit Account No. 06-1050.

Respectfully submitted,

Date: November 19, 2005

  
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